

**OPINION
66-223**

August 19, 1966 (OPINION)

Mr. W. Van Heuvlen,

Executive Officer

State Health Department

RE: State - Health Department - Licensing of State Sanatorium as Hos

This is in response to your request for an opinion dated August 15, 1966. The question you state is as follows:

Does the North Dakota State Health Department have either the responsibility or the right or the authority to issue a license to operate a hospital to the State Board of Administration for the Tuberculosis Sanatorium at San Haven?"

You also state that you wish to license the Sanatorium for Medicare purposes.

Section 23-16-106 of the North Dakota Century Code gives the State Department of Health licensing power over hospitals operating within North Dakota and section 23-16-01 of the Code prescribes which hospitals within the State must have a license to operate. The pertinent language of section 23-16-01 of the North Dakota Century Code is as follows:

After July 1, 1947, no person, partnership, association, corporation, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment or care of two or more nonrelated persons suffering from illness, injury, or deformity, or where obstetrical or other care is rendered over a period exceeding twenty-four hours shall be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Hospitals maintained and operated by the state board of public welfare such as those for the aged and infirm and those for unmarried mothers and chiropractic hospitals and sanatoriums are not required to obtain a license under this chapter. In the case of hospitals maintained and operated by the state or in the case of homes licensed by the state board of public welfare, the state department of health shall have the responsibility of inspecting, rendering consultation service, and making recommendations on phases of hospital administration covered in the standards promulgated by the health council.* * *

The first sentence of the quoted section does not set out the State of North Dakota as one of the agencies operating hospitals which must be licensed. The third sentence of the quote states the the State Department of Health shall have the responsibility of inspecting, rendering consultation service, and making recommendations on phases

of hospital administration covered in the standards promulgated by the Health Council but the section does not give the Department the power to license the State Hospitals.

Therefore, it is the opinion of this office that the statutes do not provide the State Department of Health with the responsibility, right, or authority to issue a license to the Tuberculosis Sanatorium, San Haven, North Dakota, for operation as a hospital. The State Department of Health does have the responsibility of inspecting, rendering consultation service and making recommendations on phases of hospital administration covered in the standards promulgated by the Health Council.

Even though the North Dakota State Department of Health does not have the power to license the Tuberculosis Sanatorium, San Haven, North Dakota, it may inspect the hospital and issue a report to the effect that if it had the power to license the State Hospital, the Sanatorium at San Haven, North Dakota, fulfills all the department regulations and could get a hospital license. Such a report may fulfill the requirements for Medicare purposes as well as a license would.

HELGI JOHANNESON

Attorney General